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PUBLIC LAW 100-579—OCT. 31, 1988

**NATIVE HAWAIIAN HEALTH CARE
ACT OF 1988**

Public Law 100-579
100th Congress

An Act

Oct. 31, 1988
 [S. 136]

To improve the health status of Native Hawaiians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Native Hawaiian Health Care Act of 1988".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the United States retains the legal responsibility to enforce the administration of the public trust responsibility of the State of Hawaii for the betterment of the conditions of Native Hawaiians under section 5(f) of Public Law 86-3 (73 Stat. 6; commonly referred to as the "Hawaii Statehood Admissions Act");

(2) in furtherance of the State of Hawaii's public trust responsibility for the betterment of the conditions of Native Hawaiians, contributions by the United States to the provision of comprehensive health promotion and disease prevention services to maintain and improve the health status of Native Hawaiians are consistent with the historical and unique legal relationship of the United States with the government that represented the indigenous native people of Hawaii; and

(3) it is the policy of the United States to raise the health status of Native Hawaiians to the highest possible level and to encourage the maximum participation of Native Hawaiians in order to achieve this objective.

SEC. 3. COMPREHENSIVE HEALTH CARE MASTER PLAN FOR NATIVE HAWAIIANS.

(a) **DEVELOPMENT.**—The Secretary may make a grant to, or enter into a contract with, Papa Ola Lokahi for the purpose of developing a Native Hawaiian comprehensive health care master plan designed to promote comprehensive health promotion and disease prevention services and to maintain and improve the health status of Native Hawaiians. The master plan shall be based upon an assessment of the health care status and health care needs of Native Hawaiians. To the extent practicable, assessments made as of the date of such grant or contract shall be used by Papa Ola Lokahi, except that any such assessment shall be updated as appropriate.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated \$700,000 for fiscal year 1990 to carry out subsection (a).

SEC. 4. NATIVE HAWAIIAN HEALTH CENTERS.

(a) **COMPREHENSIVE HEALTH PROMOTION, DISEASE PREVENTION, AND PRIMARY HEALTH SERVICES.**—(1)(A) The Secretary, in consultation with Papa Ola Lokahi, may make grants to, or enter into contracts with, any qualified entity for the purpose of providing comprehen-

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 42 USC 11701
 note.

42 USC 11701.

42 USC 11702.

Grants.
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42 USC 11703.

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sive health promotion and disease prevention services as well as primary health services to Native Hawaiians.

(B) In making grants and entering into contracts under this paragraph, the Secretary shall give preference to Native Hawaiian health centers and Native Hawaiian organizations, and, to the extent feasible, health promotion and disease prevention services shall be performed through Native Hawaiian health centers.

(2) In addition to paragraph (1), the Secretary may make a grant to, or enter into a contract with, Papa Ola Lokahi for the purpose of planning Native Hawaiian health centers to serve the health needs of Native Hawaiian communities on each of the islands of O'ahu, Moloka'i, Maui, Hawai'i, Lana'i, Kaua'i, and Ni'ihau in the State of Hawaii.

(b) **QUALIFIED ENTITY.**—An entity is a qualified entity for purposes of subsection (a)(1) if the entity is—

- (1) a Native Hawaiian health center;
- (2) a Native Hawaiian organization; or
- (3) a public or nonprofit private health provider.

(c) **SERVICES TO BE PROVIDED.**—(1) Each recipient of funds under subsection (a)(1) shall provide the following services:

(A) Outreach services to inform Native Hawaiians of the availability of health services.

(B) Education in health promotion and disease prevention of the Native Hawaiian population by (wherever possible) Native Hawaiian health care practitioners, community outreach workers, counselors, and cultural educators.

(C) Services of physicians, physicians' assistants, or nurse practitioners.

(D) Immunizations.

(E) Prevention and control of diabetes, high blood pressure, and otitis media.

(F) Pregnancy and infant care.

(G) Improvement of nutrition.

(2) In addition to the mandatory services under paragraph (1), the following services may be provided pursuant to subsection (a)(1):

(A) Identification, treatment, control, and reduction of the incidence of preventable illnesses and conditions endemic to Native Hawaiians.

(B) Collection of data related to the prevention of diseases and illnesses among Native Hawaiians.

(C) Services within the meaning of the terms "health promotion", "disease prevention", and "primary health services", as such terms are defined in section 8, which are not specifically referred to in paragraph (1) of this subsection.

(3) The health care services referred to in paragraphs (1) and (2) which are provided under grants or contracts under subsection (a)(1) may be provided by traditional Native Hawaiian healers.

(d) **LIMITATION ON NUMBER OF ENTITIES.**—During a fiscal year, the Secretary under this Act may make a grant to, or hold a contract with, not more than nine qualified entities in the State of Hawaii, as follows:

Grants.
Contracts.

(1) Two entities serving individuals on Kaua'i, from which individuals on Ni'ihau shall also be served.

(2) Two entities serving individuals on O'ahu.

(3) One entity serving individuals on Moloka'i, from which individuals on Lana'i shall also be served.

(4) Two entities serving individuals on Maui.

(5) Two entities serving individuals on Hawai'i.

(e) **MATCHING FUNDS.**—(1) The Secretary may not make a grant or provide funds pursuant to a contract under subsection (a)(1) to an entity—

(A) in an amount exceeding 75 percent of the costs of providing health services under the grant or contract; and

(B) unless the entity agrees that the entity will make available, directly or through donations to the entity, non-Federal contributions toward such costs in an amount equal to not less than \$1 (in cash or in kind under paragraph (2)) for each \$3 of Federal funds provided in such grant or contract.

(2) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government or services assisted or subsidized to any significant extent by the Federal Government may not be included in determining the amount of such non-Federal contributions.

(3) The Secretary may waive the requirement established in paragraph (1) if—

(A) the entity involved is a nonprofit private entity described in subsection (b); and

(B) the Secretary, in consultation with Papa Ola Lokahi, determines that it is not feasible for the entity to comply with such requirement.

(f) **RESTRICTION ON USE OF GRANT AND CONTRACT FUNDS.**—The Secretary may not make a grant to, or enter into a contract with, an entity under subsection (a)(1) unless the entity agrees that amounts received pursuant to such subsection will not, directly or through contract, be expended—

(1) for any purpose other than the purposes described in subsection (c);

(2) to provide inpatient services;

(3) to make cash payments to intended recipients of health services; or

(4) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment.

(g) **LIMITATION ON CHARGES FOR SERVICES.**—The Secretary may not make a grant, or enter into a contract with, an entity under subsection (a)(1) unless the entity agrees that, whether health services are provided directly or through contract—

(1) health services under the grant or contract will be provided without regard to ability to pay for the health services; and

(2) the entity will impose a charge for the delivery of health services, and such charge—

(A) will be made according to a schedule of charges that is made available to the public, and

(B) will be adjusted to reflect the income of the individual involved.

(h) **AUTHORIZATION OF APPROPRIATIONS.**—(1) There is authorized to be appropriated \$5,000,000 for fiscal year 1991 and \$10,000,000 for fiscal year 1992 to carry out subsection (a)(1).

(2) There is authorized to be appropriated for fiscal year 1990 \$900,000 to carry out subsection (a)(2).

SEC. 5. ADMINISTRATIVE GRANT FOR PAPA OLA LOKAHI.

42 USC 11704.

(a) **IN GENERAL.**—In addition to any other grant or contract under this Act, the Secretary may make grants to, or enter into contracts with, Papa Ola Lokahi for—

Contracts.

(1) coordination, implementation, and updating (as appropriate) of the comprehensive health care master plan developed pursuant to section 3;

(2) training for the persons described in section 4(c)(1)(B); or

(3) identification of and research into the diseases that are most prevalent among Native Hawaiians, including behavioral, biomedical, epidemiological, and health services.

Research and development.
Diseases.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated \$1,000,000 for each of the fiscal years 1990, 1991, and 1992 to carry out subsection (a).

SEC. 6. ADMINISTRATION OF GRANTS AND CONTRACTS.

42 USC 11705.

(a) **TERMS AND CONDITIONS.**—The Secretary shall include in any grant made or contract entered into under this Act such terms and conditions as the Secretary considers necessary or appropriate to ensure that the objectives of such grant or contract are achieved.

(b) **PERIODIC REVIEW.**—The Secretary shall periodically evaluate the performance of, and compliance with, grants and contracts under this Act.

(c) **ADMINISTRATIVE REQUIREMENTS.**—The Secretary may not make a grant or enter into a contract under this Act with an entity unless the entity—

(1) agrees to establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant or contract;

(2) agrees to ensure the confidentiality of records maintained on individuals receiving health services under the grant or contract;

Classified information.
Records.

(3) with respect to providing health services to any population of Native Hawaiians a substantial portion of which has a limited ability to speak the English language—

(A) has developed and has the ability to carry out a reasonable plan to provide health services under the grant or contract through individuals who are able to communicate with the population involved in the language and cultural context that is most appropriate; and

(B) has designated at least one individual, fluent in both English and the appropriate language, to assist in carrying out the plan;

(4) with respect to health services that are covered in the plan of the State of Hawaii approved under title XIX of the Social Security Act—

(A) if the entity will provide under the grant or contract any such health services directly—

(i) the entity has entered into a participation agreement under such plan; and

(ii) the entity is qualified to receive payments under such plan; and

(B) if the entity will provide under the grant or contract any such health services through a contract with an organization—

(i) the organization has entered into a participation agreement under such plan; and

(ii) the organization is qualified to receive payments under such plan; and

Reports.

(5) agrees to submit to the Secretary and to Papa Ola Lokahi an annual report that describes the utilization and costs of health services provided under the grant or contract (including the average cost of health services per user) and that provides such other information as the Secretary determines to be appropriate.

(d) **CONTRACT EVALUATION.**—(1) If, as a result of evaluations conducted by the Secretary, the Secretary determines that an entity has not complied with or satisfactorily performed a contract entered into under section 4, the Secretary shall, prior to renewing such contract, attempt to resolve the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance. If the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such entity and is authorized to enter into a contract under section 4 with another entity referred to in section 4(b) that provides services to the same population of Native Hawaiians which is served by the entity whose contract is not renewed by reason of this subsection.

(2) In determining whether to renew a contract entered into with an entity under this Act, the Secretary shall consider the results of evaluation under this section.

(3) All contracts entered into by the Secretary under this Act shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and may be exempted from the provisions of the Act of August 24, 1935 (40 U.S.C. 270a et seq.).

(4) Payments made under any contract entered into under this Act may be made in advance, by means of reimbursement, or in installments and shall be made on such conditions as the Secretary deems necessary to carry out the purposes of this section.

(e) **LIMITATION ON USE OF FUNDS FOR ADMINISTRATIVE EXPENSES.**—Except for grants and contracts under section 5, the Secretary may not make a grant to, or enter into a contract with, an entity under this Act unless the entity agrees that the entity will not expend more than 10 percent of amounts received pursuant to this Act for the purpose of administering the grant or contract.

(f) **REPORT.**—(1) For each fiscal year during which an entity receives or expends funds pursuant to a grant or contract under this Act, such entity shall submit to the Secretary and to Papa Ola Lokahi a quarterly report on—

(A) activities conducted by the entity under the grant or contract;

(B) the amounts and purposes for which Federal funds were expended; and

(C) such other information as the Secretary may request.

Records.

(2) The reports and records of any entity which concern any grant or contract under this Act shall be subject to audit by the Secretary, the Inspector General of Health and Human Services, and the Comptroller General of the United States.

(g) **ANNUAL PRIVATE AUDIT.**—The Secretary shall allow as a cost of any grant made or contract entered into under this Act the cost of an annual private audit conducted by a certified public accountant.

SEC. 7. ASSIGNMENT OF PERSONNEL.

42 USC 11706.

(a) **IN GENERAL.**—The Secretary is authorized to enter into an agreement with any entity under which the Secretary is authorized to assign personnel of the Department of Health and Human Services with expertise identified by such entity to such entity on detail for the purposes of providing comprehensive health promotion and disease prevention services to Native Hawaiians.

Contracts.
Diseases.

(b) **APPLICABLE FEDERAL PERSONNEL PROVISIONS.**—Any assignment of personnel made by the Secretary under any agreement entered into under the authority of paragraph (1) shall be treated as an assignment of Federal personnel to a local government that is made in accordance with subchapter VI of chapter 33 of title 5, United States Code.

SEC. 8. DEFINITIONS.

42 USC 11707.

For purposes of this Act:

(1) **DISEASE PREVENTION.**—The term “disease prevention” includes—

- (A) immunizations,
- (B) control of high blood pressure,
- (C) control of sexually transmittable diseases,
- (D) prevention and control of diabetes,
- (E) control of toxic agents,
- (F) occupational safety and health,
- (G) accident prevention,
- (H) fluoridation of water,
- (I) control of infectious agents, and
- (J) provision of mental health care.

(2) **HEALTH PROMOTION.**—The term “health promotion” includes—

- (A) pregnancy and infant care, including prevention of fetal alcohol syndrome,
- (B) cessation of tobacco smoking,
- (C) reduction in the misuse of alcohol and drugs,
- (D) improvement of nutrition,
- (E) improvement in physical fitness,
- (F) family planning, and
- (G) control of stress.

(3) **NATIVE HAWAIIAN.**—The term “Native Hawaiian” means any individual who has any ancestors that were natives, prior to 1778, of the area that is now the State of Hawaii as evidenced by—

- (A) genealogical records,
- (B) Kupuna (elders) or Kama’aina (long-term community residents) verification, or
- (C) birth records of the State of Hawaii.

(4) **NATIVE HAWAIIAN HEALTH CENTER.**—The term “Native Hawaiian health center” means an entity—

- (A) which is organized under the laws of the State of Hawaii,
- (B) which provides or arranges for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable,
- (C) which is a public or nonprofit private entity, and
- (D) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services.

(5) **NATIVE HAWAIIAN ORGANIZATION.**—The term “Native Hawaiian organization” means any organization—

(A) which serves the interests of Native Hawaiians,

(B) which is—

(i) recognized by Papa Ola Lokahi for the purpose of planning, conducting, or administering programs (or portions of programs) authorized under this Act for the benefit of Native Hawaiians, and

(ii) certified by Papa Ola Lokahi as having the qualifications and capacity to provide the services, and meet the requirements, under the contract the organization enters into with, or grant the organization receives from, the Secretary under this Act,

(C) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services, and

(D) which is a public or nonprofit private entity.

(6) **PAPA OLA LOKAHI.**—The term “Papa Ola Lokahi” means an organization composed of—

(A) E Ola Mau;

(B) the Office of Hawaiian Affairs of the State of Hawaii;

(C) Alu Like Inc.;

(D) the University of Hawaii; and

(E) the Office of Hawaiian Health of the Hawaii State Department of Health.

(7) **PRIMARY HEALTH SERVICES.**—The term “primary health services” means—

(A) services of physicians, physicians’ assistants and nurse practitioners;

(B) diagnostic laboratory and radiologic services;

(C) preventive health services (including children’s eye and ear examinations to determine the need for vision and hearing correction, perinatal services, well child services, and family planning services);

(D) emergency medical services;

(E) transportation services as required for adequate patient care;

(F) preventive dental services; and

(G) pharmaceutical services, as may be appropriate for particular health centers.

(8) **SECRETARY.**—The term “Secretary” means the Secretary of Health and Human Services.

(9) **TRADITIONAL NATIVE HAWAIIAN HEALER.**—The term “traditional Native Hawaiian healer” means a practitioner—

(A) who—

(i) is of Hawaiian ancestry, and

(ii) has the knowledge, skills, and experience in direct personal health care of individuals, and

(B) whose knowledge, skills, and experience are based on a demonstrated learning of Native Hawaiian healing practices acquired by—

(i) direct practical association with Native Hawaiian elders, and

(ii) oral traditions transmitted from generation to generation.

SEC. 9. RULE OF CONSTRUCTION.

42 USC 11708.

Nothing in this Act shall be construed to restrict the authority of the State of Hawaii to license health practitioners.

SEC. 10. REPEAL OF DEMONSTRATION PROJECT.

Section 205 of the Indian Health Care Improvement Act, as added by section 203(c) of the Indian Health Care Amendments of 1988, is repealed.

SEC. 11. COMPLIANCE WITH BUDGET ACT.

42 USC 11709.

Any new spending authority (described in subsection (c)(2) (A) or (B) of section 401 of the Congressional Budget Act of 1974) which is provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

SEC. 12. SEVERABILITY.

42 USC 11710.

If any provision of this Act, or the application of any such provision to any person or circumstances is held to be invalid, the remainder of this Act, and the application of such provision or amendment to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

Approved October 31, 1988.

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LEGISLATIVE HISTORY—S. 136:

SENATE REPORTS: No. 100-580 (Select Comm. on Indian Affairs).
CONGRESSIONAL RECORD, Vol. 134 (1988):

Sept. 30, considered and passed Senate.

Oct. 12, considered and passed House, amended.

Oct. 14, Senate concurred in House amendment.

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